

MAY 18 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

WINSTON KEMPER,

Plaintiff - Appellant,

v.

S. O'BARR,

Defendant - Appellee,

and

LASSEN MEDICAL STAFF,

Defendants.

Nos. 03-16037, 03-16039

D.C. No. CV-98-00913-GGH

MEMORANDUM^{*}

Appeal from the United States District Court
for the Eastern District of California
Gregory G. Hollows, Magistrate Judge, Presiding^{**}

Submitted May 15, 2006^{***}

Before: B. FLETCHER, TROTT, and CALLAHAN, Circuit Judges.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} All parties consented in writing to proceed before a magistrate judge.

^{***} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

California state prisoner Winston Kemper appeals pro se from the district court's order enforcing an agreement to settle Kemper's 42 U.S.C. § 1983 action and dismiss it with prejudice. We review for abuse of discretion, *Callie v. Near*, 829 F.2d 888, 890 (9th Cir. 1987), and we affirm.

On February 10, 2003, the parties appeared before Magistrate Judge Hollows for a settlement conference. On February 11, 2003, Magistrate Judge Hollows issue an order stating the terms of the parties' settlement agreement, and giving the parties until February 24, 2003, to file any objections.

The court did not abuse its discretion in dismissing the case with prejudice because Kemper did not timely file his objection to the settlement amount. *See id.*; *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992).

We do not consider the issue of Kemper's time credit history because pursuant to the binding settlement agreement, Kemper waived his right to appeal that decision.

AFFIRMED.